

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RENEE SMITH,  
Individually and on behalf of all others similarly  
situated,

Plaintiff,

v.

PHH CORPORATION, *et al.*,

Defendants.

Case No.: 08-CV-3018 (JGK)(MHD)

**DEFENDANTS' PARTIAL MOTION  
TO DISMISS COMPLAINT AND  
MOTION TO STRIKE AND/OR  
MODIFY CLASS ALLEGATIONS**

Defendants PHH Corporation and PHH Mortgage Corporation<sup>1</sup> respectfully move to dismiss plaintiff's Class Action Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants aver that the Complaint is unsustainable in its entirety as against PHH Corporation, the parent corporation of PHH Mortgage Services, because plaintiff has failed to allege any facts or theories of liability that would implicate the parent corporation. Further, the Second Cause of Action, alleged violation of New York State Real Property Tax Law § 952 *et seq.*, should be dismissed for failure to state a claim and because there is no private right of action for the alleged violation in this case.

In addition, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, defendants move to strike the class allegations in plaintiff's two state law claims because these counts seek recovery of a "penalty" in violation of § 901(b) of New York Civil Practice Law and Rules. With respect to plaintiff's claim under the federal Real Estate Settlement Procedures Act, 12

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<sup>1</sup> The Complaint incorrectly identifies PHH Mortgage Corporation as "PHH Mortgage Services."

U.S.C. § 2601 *et seq.* (“RESPA”), defendants move to limit the proposed class period to one year to correspond to RESPA’s one-year statute of limitations.

In support of their Motion to Dismiss and Motion to Strike, defendants rely upon the supporting Memorandum of Law, incorporated herein by reference.

Respectfully submitted,

WEINER BRODSKY SIDMAN KIDER PC

By: /s/ David M. Souders  
David M. Souders (admitted *pro hac vice*)  
1300 19th Street, NW, Fifth Floor  
Washington, DC 20036  
Telephone: (202) 628-2000  
Facsimile: (202) 628-2011  
souders@wbsk.com

Daniel F. Markham (DM 8431)  
COUGHLIN DUFFY LLP  
Wall Street Plaza  
88 Pine Street, 5<sup>th</sup> Floor  
New York, New York 10005  
Telephone: (212) 483-0105  
Facsimile: (212) 480-3899  
dmarkham@coughlinduffy.com

Attorneys for Defendants PHH Corporation  
and PHH Mortgage Corporation

Dated: May 13, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2008, I caused a true and correct copy of the foregoing Defendants' Partial Motion to Dismiss and Motion to Strike and/or Modify Class Allegations to be electronically filed and served upon the following counsel of record:

Stuart E. Nahas, Esq.  
ZRAICK, NAHAS & RICH  
303 Fifth Avenue  
New York, NY 10016

Wayne S. Kreger, Esq.  
MILSTEIN, ADELMAN & KREGER, LLP  
2800 Donald Douglas Loop North  
Santa Monica, CA 90405

/s/ David M. Souders  
David M. Souders (admitted *pro hac vice*)